



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2021

CORAM

THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM
and
THE HON'BLE MRS.JUSTICE S.ANANTHI

W.P. (MD)Nos.9083 and 9099 2021
and
W.M.P. (MD)Nos.6839, 6842, 6858 and 6859 of 2021

W.P. (MD)No.9083 of 2021:-

Shanthi

...Petitioner

-Vs-

1.The Junior Engineer,
Public Works Department,
Water Resource Organisation,
South Channel Division,
Tamiraparani Irrigation System,
Thenthirupperai - 628 623,
Thoothukudi District.

2.The Tasildar,
Tiruchendur Taluk Office,
Tiruchendur 628 215.

3.The Executive Officer,
Tiruchendur Special Grade Town Panchayat,
Tiruchendur - 628 215.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent No.1, with respect to the impugned order of the 1st respondent in Form-III, dated 19.04.2021 under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and quash the same as illegal and consequently forbearing the respondent No.1 or its men or agents from entering schedule property of the petitioner in Survey No.243 A/1 A and 595, situated in the Keela Tiruchendur Village, Tiruchendur Taluk, Thoothukudi District.

For Petitioner : Mr.B.Ramkumar Adityan,

For Respondents : Mr.Veerakathiravan
Senior Counsel for Government
Mr.R.Baskaran
Standing Counsel for Government



W.P. (MD) No.9099 of 2021:-

Rajeshwari

...Petitioner

-Vs-

1.The Junior Engineer,
Public Works Department,
Water Resource Organisation,
South Channel Division,
Tamiraparani Irrigation System,
Thenthirupperai - 628 623,
Thoothukudi District.

2.The Tasildar,
Tiruchendur Taluk Office,
Tiruchendur 628 215.

3.The Executive Officer,
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Tiruchendur - 628 215.

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Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent No.1, with respect to the impugned order of the 1st respondent in Form-III, dated 19.04.2021 under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and quash the same as illegal and consequently forbearing the respondent No.1 or its men or agents from entering schedule property of the petitioner in Survey No.243A/1A and 595, situated in the Keela Tiruchendur Village, Tiruchendur Taluk, Thoothukudi District.

For Petitioner : Mr.B.Ramkumar Adityan,
Mr.Veerakathiravan
Senior Counsel for Government

For Respondents : Mr.R.Baskaran
Standing Counsel for Government

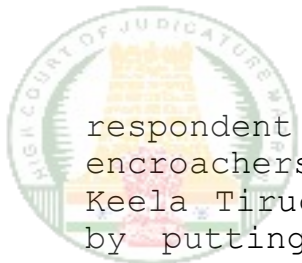
COMMON ORDER

[Common Order of the Court was made by T. S. SIVAGNANAM, J.,]

Heard Mr.B.Ramkumar Adityan, learned Counsel for the petitioner and Mr.Veerakathiravan, learned Senior Counsel for Mr.R.Baskaran, learned Standing Counsel for the respondents in both the Writ Petitions.

2.With the consent on either side, both these Writ Petitions are taken up together and disposed of by this common order.

3.The petitioners in these Writ Petitions are similarly placed in the sense they are all aggrieved by a notice issued by the first



respondent dated 19.04.2020, stating that the petitioners are the encroachers of the Government Natham Poramboke lands, situate in Keela Tiruchendur Village, Tiruchendur Taluk, Thoothukudi District, by putting up construction and other encroachments. The first respondent would state that the encroachment is in a water channel. What triggered the impugned notice is a direction issued in a Writ Petition filed, styled as a Public Interest Litigation, by N.Sudalai, who claimed that he is the Founder of Indian Seva Trust. The said petitioner had filed W.P.(MD)No.17850 of 2020, praying for a direction upon the Public Works Department and the Revenue Department, to remove the encroachment made in the channel, situate in Survey No.297/16, at Thiruchendur Special Grade Town Panchayat, Thiruchendur Taluk, Thoothukudi District from Aavudaiyarkulam to Jeevanagar Beach, by considering his representations dated 19.08.2019 and 20.02.2020. To be noted, the alleged encroachers were not impleaded as respondents in the said Writ Petition. The Court *suo motu* impleaded the Executive Officer of the Thiruchendur Special Grade Town Panchayat, as the 7th respondent, took note of a report submitted by the Tahsildar, Tiruchendur, who had stated among other things that the width of the channel is 75 feet and the allegation of the said Writ Petitioner that only 20 feet width is in existence is false and even now, there is 46 feet width of channel is in existence and that the water is flowing regularly to the sea and the channel is used for discharge of water from the Aavudaiyur Kulam only during raining season and in other times, only the drainage water from the houses are flowing in the channel. Having noted the report of the Tahsildar and submission of the Executive Officer, the following directions were issued:

'6. Since action has already been taken based on the representations of the petitioner, dated 19.08.2019 and 10.02.2020, and an inspection has been made and encroachments have been identified, the respondents are directed to take action to remove the encroachments after following due process of law within two weeks from the date of receipt of a copy of this order.

7. This Writ Petition is disposed of with the above direction. No costs.'

4. From the above direction, it is seen that the Writ Court did not issue any positive direction to evict the so called encroachers. The Court was conscious of the fact that the encroachers are not parties to the Writ Petition and Therefore, ordered directing the representations of the said Writ Petitioner be considered and action be taken to remove the encroachments after following due process of law. Therefore, the authorities have to essentially comply with two requirements. Firstly, they should form a *prima facie* opinion that there is encroachment. After forming such an opinion, notice has to be issued to the alleged encroachers giving opportunity to him/her to substantiate that the presumption or the *prima facie* opinion is incorrect and that they have documents in their possession to claim



right, title and possession of the said lands. It is only thereafter, the authority can take action. If it is found that the documents produced by the noticees do not establish any title and their possession is unauthorised, then no person can claim that he/she has a vested right to squat in a water body or a water channel. That is why, the Writ Court while disposing of the earlier Writ Petition, directed the authorities to follow due process of law.

5.In the instant case, the authority, after referring to the order of the Writ Petition, straightaway directed the petitioners to vacate and remove the encroachments under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007. Under the said Act, there is no specific provisions granting an opportunity to the alleged encroachers to put forth their submissions. The Hon'ble Division Bench of this Court in **T.S.Senthil Kumar Vs. The Government of Tamil Nadu** reported in (2010) 3 MLJ 771, held that the principles of natural justice have to be read into the statutory provision and summary eviction should not be done, but opportunity should be granted to the alleged encroachers. Therefore, the first respondent should grant an opportunity to the petitioners to enable them to produce documents to prove their right, title and interest over the property in question and on production of all those documents, if it is found that they do not establish any right or title or interest over the property, then eviction proceedings can be taken. Therefore, we are of the view that the petitioners are entitled for an opportunity to put forth their submissions.

6.For the above reasons, these Writ Petitions are disposed of by directing the petitioners to treat the impugned notice as show cause notice and submit their objections, along with supportive documents not later than 25.06.2021. On receipt of the documents, the first respondent shall conduct an enquiry and if necessary, form a team for inspection of the place in question and thereafter, pass a reasoned order, on merits and in accordance with law, not later than 16.07.2021. Until then, the petitioners' possession shall not be disturbed. However, the petitioners are not entitled to put up any further constructions nor alter the physical features of the properties. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Junior Engineer,
Public Works Department,
Water Resource Organisation,
South Channel Division,
Tamiraparani Irrigation System,
Thenthirupperai - 628 623,
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3. The Executive Officer,
Tiruchendur Special Grade Town Panchayat,
Tiruchendur - 628 215.

Common Order made in
W.P. (MD) Nos. 9083 and 9099 2021

01.06.2021

CN(15.06.2021) 5P 4C